

FILED
DISTRICT COURT OF GUAM

SEP 27 2005

MARY L.M. MORAN
CLERK OF COURT

**DISTRICT COURT OF GUAM
TERRITORY OF GUAM**

DON CRISOLOGO,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Criminal Case No. 00-00047

Civil Case No. 04-00044

ORDER

Petitioner Don Crisologo ("Crisologo") filed a Motion to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody pursuant to 28 U.S.C. § 2255 ("Motion"). The Court has carefully reviewed the pleadings and relevant law in the matter. Crisologo maintains that after he was sentenced, he advised his counsel to file a Notice of Appeal. Despite this instruction to counsel, no notice was filed and his appellate rights were forfeited. This claim by Crisologo is sufficient to warrant inquiry. The Government has not submitted any documentation or affidavit to refute Crisologo's claim. The Court finds that *Roe v. Flores-Ortega*, 528 U.S. 470, 120 S.Ct. 1029, (2000) and *United States v. Sandoval-Lopez*, 409 F.3d 1193 (9th Cir. 2005) are directly applicable to the instant case. Accordingly, in light of the defendant's claim the Court has the following options:

[t]he district court can hold an evidentiary hearing to decide whether [Crisologo's] allegation is true, and if it is, vacate and reenter the judgment, allowing the appeal to proceed. Or, if the state does not object, the district court can vacate and reenter the

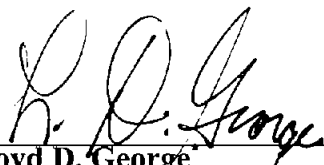
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1 judgment without a hearing and allow the appeal to proceed,
2 assuming without deciding that the petitioner's claim is true.

3 *Sandoval-Lopez*, 409 F.3d 1193, 1198 (9th Cir. 2005).

4 Accordingly, in the interests of judicial economy, the Court will proceed with the latter
5 course of action unless the Government files an objection and notice of request for evidentiary
6 hearing by October 28, 2005. Absent an objection and request for an evidentiary hearing by the
7 Government, the Court will vacate and reenter the judgment in this matter thereby reviving
8 Crisologo's ability to appeal to the Ninth Circuit.

9 **IT IS SO ORDERED** this 26 day of September, 2005.

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13 **Lloyd D. George**
14 **United States District Judge**
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* The Honorable Lloyd D. George, United States Senior District Judge for Nevada, by designation.